

payment of the full toll specified in the schedule under the tariff in § 402.8 of this part if shipments of a particular commodity during 1995 exceed by a minimum of 25,000 tons the shipper's or receiver's highest tonnage for that particular commodity during 1991, 1992, 1993, or 1994 in the Seaway.

* * *

(b) Volume rebates shall be granted only with respect to commodities whose shipper and receiver have shipped or received the subject commodity in the years 1991, 1992, 1993, and 1994 and have not been subject of a merger or take-over during 1991, 1992, 1993, 1994, or 1995.

(c) The volume rebate shall be equal to a 50 percent reduction of the portion of the composite toll related to charges per metric ton of cargo paid for the shipments that surpass the shippers or receiver's highest tonnage for that commodity during 1991, 1992, 1993, or 1994. Payment of rebates will be made directly to the qualified receiver or shipper.

(d) A description of the shipper's or receiver's Seaway traffic history for 1991, 1992, 1993, 1994, and 1995 by port, vessel name, transit date, commodity description, and tonnage shall be submitted by the shipper or receiver prior to the end of 1995 and shall be subject to audit by the Authority.

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Issued at Washington, D.C. on October 27, 1995.

Saint Lawrence Seaway Development Corporation.

David G. Sanders,

Acting Administrator.

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FEDERAL MARITIME COMMISSION

46 CFR Part 514

[Docket No. 95-13]

Automated Tariff Filing and Information System

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: This Final Rule amends the requirements of the Federal Maritime Commission ("Commission" or "FMC") pertaining to the Automated Tariff Filing and Information System ("ATFI") to clarify that no individual may file or retrieve ATFI data until he or she submits a User Registration Form and supporting documents, together with the proper fee, to the Commission and

receives a logon ID and password. The rule also makes it clear that this requirement cannot be circumvented by sharing, loaning or using logon IDs or passwords assigned to others. In addition, the rule permits the on-line downloading of daily subscriber data. Subscribers may request daily updates on tape provided by them in those instances where on-line downloading is not cost-effective. Full database tapes, weekly update tapes, and monthly update tapes will no longer be provided. **EFFECTIVE DATE:** December 7, 1995.

FOR FURTHER INFORMATION CONTACT: Doris J. Spencer, Director, Office of Information Resources Management, Federal Maritime Commission, 800 North Capitol Street NW., Washington, D.C. 20573, (202) 523-5835.

SUPPLEMENTARY INFORMATION: The Commission's tariff filing rules at 46 CFR 514.8(f)(1) provide that the ATFI logon IDs and passwords are issued to individual users. Despite this provision, there have been numerous instances of logon IDs or passwords being shared with, loaned to or used by others. The Commission therefore issued a Notice of Proposed Rulemaking ("NPR") to amend § 514.8 to clarify that no individual may file or retrieve ATFI data until he or she submits a User Registration Form, supporting documents, and the proper fee, to the Commission and receives a logon ID and password. (60 FR 45126, Aug. 30, 1995).

Additionally, given the Commission's reduced level of funding, it is no longer feasible for the Commission to provide full database tapes, weekly update tapes and monthly update tapes. As an alternative, the Commission proposed to implement the capability for on-line downloading of daily subscriber data.

Four parties filed comments in response to the NPR: Rijnhaave Information Services, Inc. ("RIS"), D.X.I. Incorporated ("DXI"), Pacific Coast Tariff Bureau ("PCTB") and Effective Tariff Management Corporation ("ETM").

The only comment addressing the proposed password and user ID rule revision was filed by RIS. It is RIS's contention that user IDs and passwords are issued to the tariff publisher and not to a single individual within the tariff publisher's organization. In support of its position RIS cites 46 CFR 514.2 which states that: "Publisher (tariff) means an organization authorized to file or amend tariff information." RIS also refers to Commission News Release 93-11, Assignment of ATFI Access Privileges and Further Batch Filing Certification, August 4, 1993. The News Release states that if the carrier

authorizes the tariff publisher to maintain the carrier's organizational record, the publisher, not the carrier, will be the owner of the logon ID and password.

RIS's argument fails to distinguish between the authority to file and amend tariffs and the authority to amend the organizational record of the carrier. A tariff publisher may have authority to file and amend tariffs on behalf of a carrier without having a logon ID and password to access the carrier's organizational record. News Release 93-11 leaves no doubt that logon IDs and passwords are issued to individuals within an organization and not to the organization itself. The News Release states:

Each organization may identify only one person authorized to update the Organization Record, which is an ATFI component that reflects information about the organization. This person's Login ID has the authority to change information in the Organizational Record.

On the registration form ("form"), the person listed in block 8 will be the owner of the Login ID and password.

The portion of the News Release relied upon by RIS simply points out that, if a carrier authorizes the tariff publisher to maintain the carrier's organizational record, the carrier will not be issued a logon ID and password. That discussion does not contradict the statement quoted above which appears in the same news release. Accordingly, the Commission rejects RIS's comment and will adopt the proposed clarification of its rules pertaining to logon IDs and passwords.

All parties express a desire for the continuation of full database tapes subscriber data. Full database tapes are said to be necessary to audit and add new tariffs to their systems. ETM also opposes the elimination of the weekly subscriber tapes based on (1) the cost of daily data versus weekly update tapes, (2) the cost of higher speed communications equipment, and (3) prolonged on-line downloading time requiring additional lines and equipment to avoid work flow disruptions.

Due to reduced appropriations, the Commission has been forced to curtail purchases of equipment and services pursuant to its ATFI contract. As part of the Commission's efforts to reduce expenses, the position previously responsible for, among other things, developing weekly, monthly and full data base tapes has been eliminated from the contract. The Commission could not avoid cuts in the ATFI program by increasing user fees. User fees are payable to the U.S. Treasury

and cannot be retained by the Commission to defray the cost of ATFI.

The Commission is sympathetic to those who want the Commission to continue to provide weekly, monthly and full data base tapes, and understands that the elimination of this service may have the effect of increasing a tariff publisher's cost of doing business. However, the Commission simply lacks the funds to continue providing weekly, monthly and full data base tapes.

The change will not deprive the industry of ATFI subscriber data that it would otherwise receive. All data contained on a full data base tape has been previously made available as daily subscriber data. While the Commission has an obligation to make ATFI subscriber data available, the Commission does not have an obligation to make the data available in a particular format.

The Commission will make certain modifications to the fees for ATFI data in order to ameliorate the effects of the elimination of weekly, monthly and full data base tapes. Persons requesting download of daily updates will not be required to pay \$61 as stated in the NPR, but only 46 cents per minute as now required by § 514.21(g)(1). Persons requesting daily updates on tape must supply the tapes and return postage, and pay \$43 per daily update as opposed to the \$61 specified in the NPR. The charge of \$43 reflects the average downloading time, at 46 cents a minute, and associated labor costs. Although these charges are based on the Commission's costs, the Commission cannot retain the charges to defray the cost of providing the service, as explained above.¹

The Commission plans a transition period during which users may receive daily subscriber data either on tape or through on-line download. This will allow subscribers to thoroughly test the data download functionality and compare the results with tape data. The transition period will also provide an opportunity for batch retrievers and batch filers to access the system using higher speed modems and/or improved file transfer software. After this period, firms desiring to receive daily data on tape will be required to furnish their own tapes.

The Commission will install 28.8 Kbps modems and make available the Zmodem file transfer protocol on the ATFI system. Batch retrievers and batch filers may wish to upgrade their modem speed to decrease file transfer time. The

Zmodem file transfer protocol includes a crash recovery capability that allows a data download file transfer to restart at the point where it was disrupted.

Several parties proposed other changes. RIS suggests that the certification process formerly required by 46 CFR 514.21(m) be retained. PCTB requests an ATFI enhancement that would provide the capability to download a single tariff and daily data for a single tariff. PCTB also suggests that the Commission enter into a leased line arrangement to facilitate the transmission of very large filings. RIS seeks to use dedicated lines for daily updates and batch filing sessions. All these proposals are beyond the scope of the NPR and cannot be addressed in this proceeding.

The Commission certifies pursuant to § 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental jurisdictions. The Commission recognizes that these proposed revisions may have some impact on the shipping industry, but not of the magnitude that would be contrary to the requirements of the Regulatory Flexibility Act.

The rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended. Therefore, Office of Management and Budget review is not required.

List of Subjects in 46 CFR Part 514

Freight, Harbors, Maritime carriers, and Reporting and recordkeeping requirements.

Part 514 of Title 46 of the Code of Federal Regulations is amended as follows:

PART 514—[AMENDED]

1. The authority citation for Part 514 continues to read as follows:

Authority: 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1712, 1714–1716, 1718, 1721, and 1722; and sec. 2(b) of Pub. L. 101–92, 103 Stat. 601.

Subpart C—Form, Content and Use of Tariff Data

2. In § 514.8, paragraph (f) is revised to read as follows:

§ 514.8 Electronic Filing.

* * * * *

(f) *Password and User ID.* (1) System Identifications ("IDs") for either filing or

retrieval logon and initial password assignments are obtained by submitting the User Registration Form (exhibit 1 to this part), along with the proper fee under § 514.21 and other necessary documents prescribed by § 514.4(d) of this part, to BTCL. A separate User Registration Form is required for each individual that will access ATFI.

(2) Logon IDs and passwords may not be shared with or loaned to or used by any individual other than the individual registrant. The Commission reserves the right to disable any logon ID that is shared with, loaned to or used by parties other than the registrant.

(3) Authority for organizational maintenance, filing or retrieval can be transferred by submitting an amended registration form requesting the assignment of a new logon ID and password (see § 514.4(d)). The original logon ID will be canceled when a replacement logon ID is issued.

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3. In § 514.20, paragraph (d) is revised to read as follows:

§ 514.20 Retrieval.

* * * * *

(d) *Batch retrieval through data base files.* Interested parties may subscribe to all tariff filings/updates received by the Commission on a daily basis. The ATFI System Administrator will create a daily subscriber data update file which will be accessible to subscribers. The daily updates subscriber will access the ATFI system to on-line download the tariff updates received during the previous workday and any intervening weekend/holidays, as well as any tariff updates created by the Commission (e.g., suspensions, rejections, etc.). Subscribers may request that daily updates be forwarded on tape (either 9 track, 6250 bpi or 8 mm cartridge, Exabyte 8500 compatible) when the file size indicates that the on-line download option is not cost-effective. Subscriber responsibility and charges for use of this option are specified in § 514.21(j)(2). The Commission may also send selected daily updates by first class mail (or as directed by subscribers at subscriber's expense) or make updates available at the ATFI computer center when the magnitude of the file size indicates that downloads would degrade ATFI access for other ATFI user functions. The charge specified in § 514.21(j)(2) will apply, but subscribers will not be required to provide tapes. Subscribers requesting update data on tape are responsible for insuring that the Commission has received sufficient pre-paid monies before the last business day of the preceding month in order to subscribe to the next month's filings.

¹ Section 514.20(d) was also modified to clarify the application of § 514.21(j)(2).

The Commission will terminate the download capability of any accounts in arrears.

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4. In § 514.21, paragraph (j) is revised to read as follows:

§ 514.21 User charges.

* * * * *

(j) *Daily Subscriber Data (§ 514.20(d)).*

(1) Persons requesting download of daily updates must pay 46 cents per minute as provided by § 514.21(g)(1).

(2) Persons requesting daily updates on tape must supply the tapes and return postage, and pay \$43 per daily update.

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By the Commission.

Joseph C. Polking,
Secretary.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[DA 95-2190]

Independent Data Communications Manufacturers Association (IDCMA) and AT&T Corp. Petitions Regarding Frame Relay Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; declaratory ruling.

SUMMARY: This order grants separate Petitions for declaratory ruling concluding that: AT&T's InterSpan Frame Relay Service incorporates a basic service that must be offered pursuant to tariff; and all facilities-based IXCs offering basic frame relay service must also tariff the service. The intended effect of this order is that all facilities-based IXCs offering basic frame relay service must file tariffs within sixty (60) days of the effective date of this order.

EFFECTIVE DATE: December 7, 1995.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Stuart Kupinsky at (202) 418-1587 or Rose Crellin at (202) 418-1581, Policy and Program Planning Division, Common Carrier Bureau (202) 418-1580.

SUPPLEMENTARY INFORMATION: On November 28, 1994, the Independent Data Communications Manufacturers Association, Inc. (IDCMA) filed a

petition for declaratory ruling that AT&T's InterSpan Frame Relay Service (InterSpan) is a basic transmission service subject to the tariffing and other requirements of Title II of the Communications Act of 1934, as amended (Act). Thereafter, on December 5, 1994, AT&T filed a separate petition for declaratory ruling that the Commission's decision regarding InterSpan should apply to all other interexchange carrier's (IXSs) frame relay services.

IDCMA's petition requested that the Commission declare AT&T's InterSpan service to be a basic service that AT&T must offer under tariff. Thus, the issue before the Commission was whether AT&T and certain other carriers must offer frame relay service as a regulated telecommunications service in accordance with the requirements of Title II of the Act and the Commission's Computer II, 45 FR 31319, May 13, 1980, and Computer III, 51 FR 24350, July 3, 1986, proceedings.

Frame relay is a high-speed packet-switching technology used to communicate data between, among other things, disperse local area computer networks (LANs). Digital data is divided into individual "packets"—each with its own destination information—that are transmitted separately. When all the packets of data arrive at this destination, they are reassembled into their original form.

Frame relay technology also serves as the intermediary format for data traveling between and among computer systems employing different communications protocols. AT&T's InterSpan Service, for example, provides a variety of protocol conversion functions permitting communication with its frame relay network. That is, a customer may provide data to the network in an original protocol, the network converts the data into frame relay protocol, transmits the data across the network, and then converts the data back to the original protocol or a different protocol before delivering the data out of the network.

The regulatory treatment of data communications services is governed by the basic-enhanced services framework established in the Commission's Computer II proceeding. Computer II Final Order, 77 FCC2d 384 (1980), 45 FR 31319, May 13, 1980. Basic services are regulated under Title II of the Act and Commission Rules. Common carriers must file tariffs for such services. The Commission has previously determined that packet-switching networks may provide a basic service.

In contrast, section 64.702(a) of the Commission's Rules defines enhanced services in pertinent part as "services * * * which employ computer processing applications that act on the * * * protocol or similar aspects of the subscriber's transmitted information; [or] provide the subscriber additional, different, or restructured information." Thus, the Commission has traditionally treated carrier provision of protocol conversion, except in some limited cases, as an enhanced service. Enhanced services are not regulated under the Commission's Rules.

For the reasons set forth in the full Order, the Common Carrier Bureau (Bureau) concludes that frame relay service is a basic service. The Bureau finds that frame relay service offers a transmission capability that is virtually transparent in terms of its interaction with customer-supplied data. The service is already provided pursuant to tariff as a basic service by all but one of the Bell Operating companies (BOCs). Accordingly, the Bureau declines to conclude that frame relay is an enhanced service.

The Bureau rejects AT&T's argument that frame relay is an enhanced service because modifications to the frame header that occur during network transmission—such as changes in discard eligibility or location code—render the customer data that is delivered to the terminating customer through its frame relay service "different" from the data transmitted by the originating customer. The Bureau also rejects the argument of AT&T and others that the customer receives "different" or "restructured" information within the meaning of Section 64.702 if the network discards eligible frames in frame relay networks.

The Bureau also concludes that AT&T's InterSpan service in particular incorporates a basic frame relay service that AT&T must unbundle from its enhanced offering and offer under tariff.

AT&T requested in its petition that if the Commission finds that AT&T frame relay service is a basic service subject to tariff, that the ruling be made applicable to the frame relay services offered by all other IXCs.

Having applied Commission Rules and found that frame relay service is a basic service, the Bureau concludes that, pursuant to the Computer II decision, all facilities-based common carriers providing enhanced services in conjunction with basic frame relay service must file tariffs for the underlying frame relay service. This requirement applies independently of any additional requirements under the Computer III proceedings. Further, all